



**In the Matter of:**

**THOMAS SAPORITO,**

**ARB CASE NO. 03-063**

**COMPLAINANT,**

**ALJ CASE NO. 2003-CAA-9**

**v.**

**DATE: March 31, 2004**

**UNITED STATES DEPARTMENT  
OF LABOR,**

**RESPONDENT.**

**BEFORE: THE ADMINISTRATIVE REVIEW BOARD**

**Appearances:**

*For the Complainant:*

**Thomas Saporito, *pro se*, Jupiter, Florida**

*For the Respondent:*

**Steven J. Mandel, Assoc. Solicitor; Paul L. Frieden, Counsel for Appellate  
Litigation; Lynn S. McIntosh, Attorney, *United States Department of Labor,  
Washington, D.C.***

### **FINAL DECISION AND ORDER**

Thomas Saporito contends that the Occupational Safety and Health Administration (OSHA), an agency of the Labor Department, violated the whistleblower protection provisions of the Clean Air Act, 42 U.S.C.A. § 7622 (West 2004), the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C.A. § 9610 (West 2004), the Safe Drinking Water Act, 42 U.S.C.A. § 300j-9 (West 2004), the Solid Waste Disposal Act, 42 U.S.C.A. § 6971 (West 2004), the Toxic Substances Control Act, 15 U.S.C.A. § 2622 (West 2004), and the Federal Water Pollution Control Act, 33 U.S.C.A. § 1367 (West 2004). These provisions (“the environmental whistleblower provisions”) prohibit employers from discriminating and retaliating against employees for reporting occupational or health safety problems.

Saporito had filed a separate whistleblower complaint against Adecco Technical and GE Medical Services. In this matter, he contends that OSHA discriminated against him in the Adecco/GM case because it did not complete its mandated investigation within 30 days and did not properly investigate his complaint.

A Department of Labor Administrative Law Judge (ALJ) dismissed this complaint because OSHA was not Saporito's employer and therefore she lacked jurisdiction to consider the complaint. "There must . . . be an employer-employee relationship between an alleged whistleblower and the Federal agency in question before the protections of the whistleblower [provisions] extend to the alleged whistleblower." Recommended Decision Dismissing Complaint at 2-3. Saporito timely petitioned for review of the ALJ's Recommended Decision and Order.

Saporito failed to establish that OSHA was his employer. Furthermore, while we disagree with the ALJ's conclusion that she lacked jurisdiction<sup>1</sup> this Board's recent decisions fully support the ALJ's decision that OSHA is not covered employer. See *Lewis v. Synargo Technologies*, ARB Nos. 02-72, 02-116, ALJ Nos. 02-CAA-12, 02-CAA-14, 02-CAA-17 (ARB Feb. 27, 2004) (dismissing complaint because complainant failed to establish an employment relationship with the respondent employer); *Anderson v. Metro Wastewater Reclamation Dist.*, ARB No. 01-103, ALJ No. 97-SDW-7 (ARB May 29, 2003) (noting that SWDA, SDWA, CERCLA, FWPCA, TSCA and ERA, require complaining employee to have an employment relationship with respondent employer); *Bath v. United States Nuclear Regulatory Comm'n*, ARB No. 02-041, ALJ No. 2001-41 (ARB Sep. 29, 2003) (statutory references to "employees," "employers," and "persons" in the Energy Reorganization Act whistleblower protection provision similar to those in the environmental whistleblower provision require an employment relationship between a complainant and the respondent employer).

Accordingly, we agree with the ALJ's findings and conclusions and **DISMISS** the complaint.

**SO ORDERED.**

**M. CYNTHIA DOUGLASS**  
**Chief Administrative Appeals Judge**

**OLIVER M. TRANSUE**  
**Administrative Appeals Judge**

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<sup>1</sup> *Sasse v. United States Dep't of Justice*, ARB No. 99-053, ALJ No. 98-CAA-7, slip op. at 3-4 (ARB Aug. 31, 2000).